IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2004

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 38760 of 2003
and
W.P.M.P. No. 46938 of 2003
W.V.M.P. No. 85 of 2004

1. S. Kamaraj
2. V. Shanmugam @ Selvaraj
3. P. Pasumalai Nadar
4. M. Yesurajan
5. M. Parimala Selvam
6. T. Ramachandran
7. A. Gnana Athisiya Selvam
8. S. Murugesan
9. S. Kadiresan
10. M. Subbiah
11. K. Sakthivel Pandiyan
12. N. Subramaniya Nadar
13. A. Selvaraj
14. A. Yacoob Nadar
15. S. Christopher
16. M. Kulasekarapandi Nadar
17. V. Rajambal ... Petitioners

-Vs-

1. Government of Tamil Nadu
rep. by its Secretary
Revenue Department
Fort St. George
Chennai - 600 009

2. The Special Commissioner
Land Administration
Chepauk, Chennai - 5

3. The Collector
Tirunelveli District

4. Kulasekarapatti Panchayat Grade II
rep. by its President
Tenkasi Taluk
Tirunelveli District

5. The Tahsildar
Tenkasi Taluk
Tirunelveli District ... Respondents

Petition under Article 226 of The Constitution of India praying for a Writ of Mandamus as stated therein.

For Petitioner : Mr. B.S. Gnanadesikan

For Respondents : Mr. A.S. Kandaswamy, Special Govt. Pleader for RR1 to 3 and R5
Mr. S.V. DuraiSolaimalai for R4

:ORDER

By consent of counsel for both sides, the main writ petition is taken up for final disposal.

2. The petitioners have come forward with this writ petition praying for a Writ of Mandamus directing the respondents herein to allot the newly constructed shops in S.No.348/1, Kulasekarapatti Village, Tenkasi Taluk, Tirunelveli District to each one of the petitioners by fixing a reasonable rent to enable the petitioners to carry on their business in the said shops as before their eviction.

3. This is a case having some background. The petitioners encroached Oorni Poromboke land to an extent of 32 Cents in Survey No.348/1, Kulasekarapatti Village, Thenkasi Taluk, Tirunelveli District. They were removed on 18-02-2001 to 20-02-2001 by the authorities without notice. Aggrieved by the same, the petitioners have filed WP No. 2109 and 2401 of 2002 and this Court by order dated 12-04-2002 allowed the writ petitions directing the respondents herein to restore the possession to the petitioners and proceed afresh in accordance with Law. As against the said order, the respondents herein have filed W.A. No. 1193 and 1194 of 2002 and a Division Bench of this Court directed the respondents to keep the restoration in abeyance, however directed the respondents herein to afford opportunity to the petitioners and pass final orders after complying with the provisions of the Land Encroachment Act. The respondents were further directed by the said Division Bench not to put up any construction. Thereafter, the Tahsildar, 5th respondent herein issued notice to the petitioners, afforded opportunity to them and passed final order of eviction on 19-06-2002 which was challenged by the petitioners by filing WP No. 24422 of 2002 and by Order dated 09-07-2002, V. Kanagaraj, J disposed of the writ petition with a direction to the petitioners to prefer regular appeal before the District Collector. Accordingly, the petitioners have preferred an appeal before the District Collector, who dismissed the appeal on 31-08-2002. Thereafter, the petitioners filed a revision before the Commissioner of Land Administration, 2nd respondent herein. Pending revision, the petitioners have also filed WP

No. 39091 of 2002 challenging the order of the appellate authority namely District Collector. The said writ petition was disposed of by R. Balasubramanian J on 23-10-2002 with a direction to the respondents herein not to put up any construction in the disputed area. Later, the 2nd respondent/revisionary authority dismissed the revision filed by the petitioners. As against the same, the petitioners have filed WP No. 14 582 of 2003 and P.D. Dinakaran, J, by his Order dated 17-06-2003 confirmed the order passed by the revisionary authority, however, liberty was given to the petitioners to approach the District Collector for seeking an alternative site within a period of four weeks from the date of receipt of a copy of that order. It was also held in the said Order that the observations made therein shall not be considered as a matter of right to the petitioners. In and by the said order, the District Collector was also directed to dispose of the representation to be filed by the petitioners within a period of eight weeks from the date of receipt of a copy of the same.

4. It is admitted by both sides that the petitioners filed representation before the District Collector, who, after giving opportunity to both sides, rejected the representation submitted by the petitioners on 17-09-2003 holding that there is no land available for distribution in Survey No.348/1. It is also an admitted fact that the petitioner has not challenged the said order of the District Collector, till date. Strangely, the petitioners have chosen to file the present writ petition seeking for a writ of mandamus directing the respondents herein to allot the newly constructed shops in S.No.348/1, Kulasekarapatti Village, Tenkasi Taluk, Tirunelveli District to each one of the petitioners by fixing a reasonable rent to enable the petitioners to carry on their business in the said shops as before their eviction.

5. Learned Special Government Pleader appearing for RR1 to 3 and R5 relied on G.O.Ms No. 277/Rural Development (C4) dated 22-01-2001 to say that allotment of shops can be made by the respondents either by sale, lease or by way of public auction and it cannot be allotted as prayed for by the petitioner.

6. The learned counsel for the petitioners submitted that since the petitioners were doing their business for a long period in Survey No.348/1, they may be considered and allotted each one shop. The learned counsel also relied upon the decision reported in (M/s. Labha Ram and Sons and others Vs. State of Punjab and others) 1998 AIR SCW 1957 wherein the Honourable Supreme Court observed that the persons carrying on business in the old market area, adjacent area was developed by acquiring land and shops and flats were built, consequently they were forced to shift to new place, in such circumstances, liberty was given to the Government to fix up any rate above the reserved price and allot shops.

7. In the said judgment, their Lordships discussed about the below mentioned earlier judgments (Prem Chand Trilok Chand Vs.State of Hariyana) in C.A. No. 3122 of 1991 dated 07-08-1991 wherein it was held thus:-

"We are of the view that normally one of the Government starts regulated the place of sale of agricultural produce/ covered by the Act and does not permit any other place to be used for the purpose, there is an inherent obligation for the Government to provide at the new site for all the licensed dealers sufficient accommodation for carrying on their trade and until that is done it would not be possible for the Government to direct closure of the old site"

8. In the case of (Chint Ram Ram Chand Vs. State of Punjab) AIR 1996 SC 1406 (overruled) it was held that:-

"Putting up new sites to auction and allowing everyone to compete would tantamount to the Government providing an opportunity to enable the existing licensees to shift their place of business to the new Mandi, if they so desire. Therefore, the observations in Prem Chand's case to the effect that there was an obligation to provide new sites for all licensed dealers would only mean that an opportunity should be granted to the licensed dealers to acquire sites in the new Mandi."

9. After considering the said two decisions, their Lordships overruled AIR 1996 SC 1406 (Chint Ram Ram Chand case) and held that merely providing an opportunity to compete with the rest of the public for getting accommodation in the new market is not sufficient to discharge the inherent obligation of the Government to provide accommodation to existing traders at the new market area.

10. Whereas, in the case on hand, the petitioners are admittedly encroachers, cannot be equated with the licensed traders mentioned in that case, hence, the principle laid down in the said cases cannot be made applicable to the present case. It is open to the petitioners to participate in the auction for lease or sale and the respondents may also consider them sympathetically keeping in mind the earlier orders passed by this Court in the writ petitions filed by them.

7. The writ petition is disposed of in the above terms. No costs. Connected WPMP and WVMP are closed.

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Index : Yes
Internet : Yes

To

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